

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

APPLICANT: Laddie L. James TITLE: Improved Tack Spraying Apparatus
SERIAL NO.: 09/642,868 ART UNIT: 3752
FILING DATE: November 1, 2000 EXAMINER: Nguyen, Dinh Q.
DOCKET NO.: 9066.002

Via Facsimile
(703) 308-7953

Commissioner of Patents
Mail Stop Appeals - Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMBINED NOTICE OF FILING OF PETITION AND REQUEST FOR STAY

The Applicant is writing to advise the Board that a Petition was filed in connection with this matter on June 14, 2004. A copy of the Applicant's Petition is included as Exhibit A to this Notice. The Petition related to the Applicant's reply brief. That reply brief was due on March 13, 2004. On April 13, 2004, the Applicant filed his reply brief together with a request for a one month extension of time under 37 C.F.R. § 1.136(a). Applicant's reply brief was rejected as untimely because extensions of time are not available under § 1.136(a) for reply briefs. Applicant has filed a petition seeking consideration of his reply brief that was filed out of time. Applicant requests that the Board stay proceedings in this appeal pending the resolution of the Applicant's Petition.

No fee is believed to be due in connection with this notice. However, if any is due, the Commissioner is hereby authorized and requested to charge the same to deposit account number 18-2210. If any further information is required or if any matter remains which may be resolved

via teleconference, the Commissioner or his representative is respectfully requested to contact the undersigned attorney at the number listed below.

Respectfully submitted:



R. Bennett Ford
Bar Roll No. 39,193

ROY, KIESEL, KEEGAN & DENICOLA
2355 Drusilla Lane
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Dated: June 15, 2004

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Mail Stop: Petitions
Attn: Steven Brantley
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO ALLOW CONSIDERATION OF REPLY BRIEF IN PATENT APPEAL FILED OUT OF TIME

The Applicant respectfully requests the Commissioner to allow and direct the Board of Patent Appeals and Interferences ("Board") to consider the Applicant's untimely Reply Brief filed in the Applicant's appeal, for the reasons stated below.

The examiner filed his answer in this appeal on January 13, 2004. Accordingly, the Applicant's Reply Brief was due on March 13, 2004. The Applicant filed a Reply Brief on April 13, 2004, together with a request for a one month extension under § 1.136(a).¹ On June 3, 2004, the examiner refused to enter the Reply Brief because it was untimely.

Applicant's attorney verified that petitions for extension of time under § 1.136(a) were available for appellate briefs prior to filing the Applicant's Supplementary Appellate Brief on October 6, 2003. Applicant's attorney *wrongly assumed* that similar extensions under § 1.136(a)

Copies of the Applicant's April 13, 2004, Reply Brief, Petition for Extension of Time, Certificate of Mailing, and Stamped Return Postcard are enclosed as Exhibit A to this Petition.



were also available for reply briefs. Applicant's attorney appreciates that knowledge of the appellate rules is his professional obligation, and he accepts full responsibility for the oversight. However, this untimely filing arose in good faith with no intention to deliberately delay matters on the part of Applicant or his attorney.

Applicant's attorney spoke to Petition's Branch attorney, Steven Brantley, today about the Applicant's response options. Applicant is grateful for the guidance provided by Mr. Brantley. Based on that conversation, it is Applicant's understanding that since the two month period for filing a reply brief is non-statutory the Office can waive the deadline. Applicant further understands that the Office's policy is to treat untimely filed appellate reply briefs in the same fashion as unintentionally abandoned applications. Accordingly, Applicant, through his attorney, hereby declares that the entire period of delay between the March 13, 2004, deadline for filing his Reply Brief and the April 13, 2004, filing of his Reply Brief was unintentional in that Applicant's counsel filed the Reply Brief late because he wrongly assumed that extensions under § 1.136(a) were available for Reply Briefs.

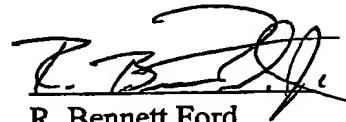
Applicant is a small entity. Therefore, a check in the amount \$665.00 is included herewith to cover the fee provided by 37 C.F.R. § 1.17(m). In view of the foregoing, the Commissioner is respectfully requested to allow and direct the Board to consider the Applicant's April 13, 2004, Reply Brief.

Finally, the Applicant notes that he submitted \$55.00 for the extension he sought under § 1.136(a) in connection with his untimely April 13, 2004, Reply Brief. As extensions under § 1.136(a) are not available for reply briefs, the Applicant respectfully requests a refund of the \$55.00 previously paid. Please credit that to deposit account number 18-2210. No other fees are believed

to be due at this time. However, if any are required, the Commissioner is hereby authorized and requested to charge the same to deposit account number 18-2210.

If the Commissioner requires any additional information or if any other matter remains which may be handled by teleconference, the Commissioner or his representative is respectfully requested to contact the undersigned attorney at the number listed below.

Respectfully submitted:



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Dated: June 14, 2004

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June 15, 2004

Via Facsimile

(703) 308-7953

Ms. Kimberly Jordan
United States Patent and Trademark Office
Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

Re: U.S. Patent Appl. Ser. No. 09/642,868
Combined Notice of Petition and Request for Stay
Our File No. 9066.002

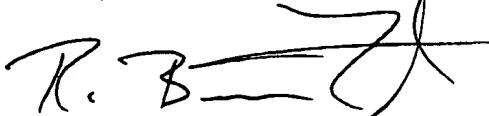
Dear Ms. Jordan:

Pursuant to your voice message of earlier today, I am faxing with this letter (1) a combined notice of petition and request for stay pending the resolution of the petition; and (2) a copy of the petition (without exhibits). We filed this petition yesterday, via express mail. Please enter them in the record of this appeal.

If anything else needs to be filed with the Board at this time or if these documents should be filed in a manner other than via facsimile, please let me know. Also, I would appreciate it if you would confirm receipt of this facsimile and its attachments. Thank you for your assistance in this regard.

Sincerely,

ROY, KIESEL, KEEGAN & DeNICOLA



R. Bennett Ford

RBF/jsb
enclosures

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TELECOPIER TRANSMITTAL COVER SHEET

DATE: June 15, 2004

TO: Ms. Kimberly Jordan
U.S. Patent and Trademark Office

FROM: R. Bennett Ford

SEND TO FAX NUMBER: (703) 308-7953

OUR FILE NUMBER: 9066.002

MESSAGE:

NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 7

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

PLEASE REPORT TRANSMISSION PROBLEMS TO Sue Butler AT: (225) 927-9908